Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN-LUC PHILIPPE BETTIOL
and
CHRISTIAAN ARTHUR JACQUES KAMIEL THOEN

Appeal No. 2003-0900
Application No. 09/485,650

ON BRIEF

Before KIMLIN, WARREN and DELMENDO, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 and 12-31, all the claims remaining in the present application.

Claim 1 is illustrative:

1. A laundry detergent composition comprising a mannanase enzyme and a cotton polyethyleneimine soil release polymer.

The examiner relies upon the following references as evidence of obviousness:

Ghosh et al. (Ghosh)	5,858,948	Jan. 12, 1999
Cuperus et al. (Cuperus)	WO 95/35362	Dec. 28, 1995

Appealed claims 1 and 12-31 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ghosh in view of Cuperus.

Appellants assert at page 3 of the Brief that "for purposes of this appeal, rejected Claims 1 and 12-31 stand or fall together." Accordingly, all the appealed claims stand or fall together with claim 1, and we will limit our consideration to the examiner's rejection of claim 1.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejection for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

Appellants do not dispute the examiner's factual determination that Ghosh, like appellants, discloses a laundry detergent composition comprising the presently claimed cotton polyethyleneimine soil release polymer and a detersive enzyme,

such as proteases and amylases. Appellants also fail to take issue with the examiner's finding that Cuperus, like Ghosh and appellants, is directed to a laundry detergent composition for, inter alia, removing soil from cotton. Accordingly, based on the unrebutted findings of the examiner, including Ghosh's express teaching that the phrase "detersive enzyme" means any enzyme having a cleaning, stain removing or otherwise beneficial effect in a laundry detergent composition (column 40, lines 11-14), we concur with the examiner's legal conclusion that it would have been obvious for one of ordinary skill in the art to select the mannanase enzyme exemplified in Cuperus for use as a detersive enzyme in the laundry composition of Ghosh.

Appellants, in attacking the cited references singularly, fail to address the thrust of the examiner's rejection, i.e., that it would have been obvious, based on the collective teachings of Ghosh and Cuperus, to select mannanase as the detersive enzyme in the detergent of Ghosh. It is well settled that the proper inquiry in determining obviousness under § 103 is what the references, taken collectively, would have suggested to one of ordinary skill in the art. In re Keller, 642 F.2d 413, 426, 208 USPQ 871, 882 (CCPA 1981). While appellants offer the conclusion that "Ghosh does not clearly

disclose the employment of a mannanase enzyme, nor does the reference suggest such employment" (page 5 of Brief, second paragraph), appellants have failed to advance a substantive argument why one of ordinary skill in the art would not have understood Ghosh as suggesting the mannanase enzyme of Cuperus. Although appellants focus upon the preferred enzymes listed by Ghosh (proteases, cellulases, lipases and proxidases), appellants have ignored the referenced teaching that detersive enzymes for laundry purposes "are not limited to" such enzymes (column 40, lines 16-17).

Appellants, in arguing against the combination of Ghosh and Cuperus by asserting that Cuperus teaches away from such a combination, conclude that "a person of ordinary skill in the art would not be motivated to modify Cuperus to achieve that which the reference purportedly accomplishes via the employment of the subject, cell wall degrading enzymes" (page 6 of Brief, third paragraph, emphasis added). Manifestly, inasmuch as the examiner's rejection is based upon a modification of Ghosh in light of Cuperus, appellants' argument is not germane to the rejection.

Also, our review of appellants' Brief finds that appellants base no argument upon objective evidence of nonobviousness, such

as unexpected results, which would serve to rebut the prima facie case of obviousness established by the examiner.

As a final point, we would caution appellants to avoid comments which denigrate the diligence and professionalism of the examiner. Appellants have presented no evidence that the examiner has proceeded "with as little effort as possible" (page 7 of Brief, last paragraph). Likewise, there is no place in these proceedings for appellants' statement that "[r]egretably, the rationale adopted by the Examiner constitutes a new and disturbing trend by which the advancement of science is replaced with the advancement of vocation" (page 5 of Brief, first paragraph). Indeed, such an ad hominem attack on the examiner is, in itself, of questionable professional nature.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

EDWARD C. KIMLIN)
Administrative Patent Judge)
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CHARLES F. WARREN) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
) INTERFERENCES
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ROMULO H. DELMENDO)
Administrative Patent Judge)

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